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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/606,745	06/29/2000	Stephen C. Tylley	00-018	7481

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EXAMINER

CAPRON, AARON J

ART UNIT PAPER NUMBER

3714

DATE MAILED: 04/10/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/606,745

Applicant(s)

TYLLEY ET AL.

Examiner

Aaron J. Capron

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 04 February 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-53 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-53 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2-4.
- 4) ☐ Interview Summary (PTO-413) Paper No(s): \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

**DETAILED ACTION**

***Claim Rejections - 35 USC § 102***

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-39 and 41-53 are rejected under 35 U.S.C. 102(b) as being anticipated by Kaye (U.S. Patent No. 5,569,082).

Kaye discloses a method of operating a gaming device that includes the determination of an outcome amount associated with a total number of events (Destiny Code) and based on a parameter associated with a player (7:39-54), allocating the outcome amount among the total number of events, wherein the total number of events is greater than one (Figure 12).

Referring to claim 2, Kaye discloses a player having the ability to bet more if the player decides to continue play, which encompasses the parameter being based upon the outcome amount (Figure 9).

Referring to claim 3, Kaye discloses that the parameter associated with the player includes the game format (7:39-54).

Referring to claim 4, Kaye discloses the parameter associated with the player includes player history information (10:32-44).

Referring to claims 5-7, Kaye discloses retrieving (7:10-23) and receiving (7:39-54) an indication of the parameter associated with the player.

Referring to claim 8, Kaye discloses that receiving is performed by the Internet (5:66 to 6:6).

Referring to claim 9, Kaye discloses determining includes receiving an indication of the outcome amount (3:46-54).

Referring to claim 10, Kaye discloses receiving the indication from the controller (3:4-15).

Referring to claim 11, Kaye discloses that receiving is performed by the Internet (5:66 to 6:6).

Referring to claim 12, Kaye discloses retrieving the stored indication of the outcome amount (3:4-21).

Referring to claim 13, Kaye discloses determining includes randomly generating the outcome amount (3:35-38).

Referring to claims 14-16, Kaye discloses that allocation is performed by a controller and a player device (5:9-26).

Referring to claim 17, Kaye discloses allocating includes selecting a subset of the total number of events and allocating the outcome amount among the subset of the total number of events (Figure 12 and 10:15-22).

Referring to claim 18, Kaye discloses determining a plurality of event outcomes based on the outcome amount and associating each of the event outcomes with one of the total number of events (Figure 12, block 244).

Referring to claim 19, Kaye discloses allocating is based on a stored outcome table or random process (Figure 12, block 244 and 10:15-22).

Referring to claim 20, Kaye discloses that determining a plurality of outcome amounts associated with a prior total number of events, the prior total number of events being different than the total number of events (Figure 12 and 10:15-19).

Referring to claim 21, Kaye discloses that allocating the plurality of outcome amounts among the total number of events (Figure 2, Figure 12, and 4:38-39).

Referring to claims 22-23, Kaye discloses determining a plurality of outcome amounts associated with a prior total number of events, the prior total number of events being less than the total number of events (Figure 12).

Referring to claim 24, Kaye discloses determining a plurality of outcome amounts associated with a prior total number of events, the prior total number of events being more than the total number of events (3:55-67).

Referring to claims 25-26, Kaye discloses an event payout amount(s) with at least one of the total number of events (Figure 12 and 10:15-22).

Referring to claim 27, Kaye discloses that at least one of the plurality of event payouts can comprise of a negative amount (Figure 10, block 198).

Referring to claim 28, Kaye discloses displaying the event payout amount to the player (5:9-23).

Referring to claim 29, Kaye discloses arranging for the player to provide payment of an amount based on a total wager amount (Figure 2), revealing the event payout amount to the player, and arranging for the player to receive payment of an amount associated with the event payout amount (5:9-23).

Referring to claim 30, Kaye discloses arranging for the player to provide payment of an amount and arranging for the player to receive payment of an amount associated with the outcome amount, wherein the outcome amount is based at least in part on the total wager amount

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and a random process (Figure 11). It is inherent to have the winning amount be based at least in part on the total wage amount.

Referring to claim 31, Kaye discloses a method that re-allocates the outcome amount among the total number of events (Figure 12).

Referring to claim 32, Kaye disclose a method that re-allocates the outcome amount among a subsequent total number of events, the subsequent total number of events being different than the total number of events (Figure 12 and 10:15-22).

Referring to claim 33, Kaye discloses that each of the total number of events is associated with an electronic representation of a scratch-off type instant game ticket (7:39-54).

Referring to claim 34, Kaye, as shown above, discloses arranging for a player to provide payment of an amount based on a total wager amount, determining the outcome amount, based on a parameter associated with the player, distributing the outcome amounts among a plurality of lottery tickets, revealing to the player the result associated with the lottery tickets and arranging for the player to receive payment of an amount.

Referring to claim 35, Kaye discloses arranging a player to provide payment to a total wager amount, receiving an indication of an outcome amount associated with an original number of tickets (ticket with Destiny Code), allocating the outcome amount among the original number of tickets, determining a modified number of tickets, reallocating the outcome amount among the number of tickets (Figure 12, block 242 and 244), revealing the lottery ticket amount to the player (disclosed above), and arranging for the player to receive payment of an amount associated with the lottery payout amount (disclosed above).

Claim 36-38 corresponds in scope to an apparatus set forth for use of the method listed in claims 1, 3-4 and 7 and is encompassed by use as set forth in the rejection above.

Claim 39 corresponds in scope to a medium storing instructions set forth for use of the method listed in claim 1 and is encompassed by use as set forth in the rejection above.

Referring to claim 41, Kaye discloses a method for determining an outcome amount associated with a player and based on a parameter associated with a player, allocating the outcome amount over a representation of space (Adventure games or stories on 7:55-65).

Referring to claim 42, Kaye discloses arranging a player to provide a payment, transmitting an indication associated with the total wager amount to a controller, receiving an indication associated with a total payout amount from the controller, receiving from the player a total number of lottery events, based on parameter associated with the player, allocating the total payout amount among the total number of lottery events, revealing at least a portion of the total payout amount, and arranging for the player to receive the payment (Figures 11 and 12).

Referring to claim 43, Kaye discloses a method for determining an outcome amount associated with a player (10:32-43) and allocating the outcome amount among a total number of events (Figure 12).

Referring to claim 44, Kaye discloses that the total number of events can be lottery tickets (7:39-54).

Claims 45-46 corresponds in scope to a method of facilitating game play set forth for use of the method listed in claims 1 and 33 and are encompassed by use as set forth in the rejection above.

Referring to claim 47-48, Kaye discloses determining a plurality of outcome amounts associated with a prior total number of events, the prior total number of events being more than a modified number of events and allocating the outcome amounts among the modified number of events (3:55-67).

Referring to claim 49-51, Kaye discloses determining a series of event results for an original number of events and allocates the series of event results among a modified number of events where both the original number of events and the modified number of events being greater than one (Figure 12).

Referring to claim 52, Kaye discloses a method for determining a series of event results for an original number of events, each of the event results being associated with a value with a predetermined range (Positive money), and allocating the series of results among a modified number of events using outside of the predetermined range (Figure 10, block 198)

Referring to claim 53, Kaye discloses a method for determining a series of event results for an original number of events where none of the series of event results have a negative value and allocating the series of event results among a modified number of events using at least one negative value (Figure 10, block 198)

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.



Claim 40 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kaye in view of Ogawa (U.S. Patent No. 6,302,794).

Kaye discloses a method for operating a gaming device that includes determining an outcome associated with the player based on a parameter associated with the player, allocating the outcome among a total number of events, but does not disclose that outcome being an expected value. However, Ogawa discloses calculating and using expected values in order to alter the odds. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to incorporate the expected values into the method of Kaye because a player could use these expected values to determine whether the player wants to try for a bigger payout, and therefore create more interest in the game.

### *Conclusion*

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Aaron J. Capron whose telephone number is (703) 305-3520. The examiner can normally be reached on M-F 8-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jessica Harrison can be reached on (703) 308-2217. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 746-9302 for regular communications and (703) 746-9303 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1148.

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April 8, 2002



JESSICA HARRISON  
PRIMARY EXAMINER